

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GERALD T. HAILEY,

Defendant-Appellant.

UNPUBLISHED

August 16, 2005

No. 254407

Wayne Circuit Court

LC No. 02-015196-01

Before: Zahra, P.J., and Cavanagh and Owens, JJ

PER CURIAM.

Defendant appeals as of right his jury trial convictions for armed robbery, MCL 750.529, possession of a firearm by a person convicted of a felony, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to eighteen to thirty years in prison for his armed robbery conviction, two to five years in prison for his felon in possession of a firearm conviction, and two years in prison for his felony-firearm conviction. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues on appeal that there was insufficient evidence to support his armed robbery conviction. We disagree.

A challenge to the sufficiency of the evidence for a criminal conviction is reviewed de novo to determine if, when reviewed in the light most favorable to the prosecutor, it could lead a rational trier of fact to find that all the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). The “standard of review is deferential, and requires a reviewing court to draw all reasonable inferences and resolve credibility conflicts in support of the jury’s verdict.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

Defendant specifically argues that the prosecution did not proffer any evidence that he took any property, and claims the record shows that his partner during the robbery, Major Shepherd, was the only person who took something from the victims. The elements of armed robbery are: (1) an assault, (2) a felonious taking of property from the victim’s presence or person, (3) while the defendant is armed with a dangerous weapon or an article used or fashioned in a manner to lead the person so assaulted to believe it to be a dangerous weapon. *People v Rodgers*, 248 Mich App 702, 707; 645 NW2d 294 (2001).

In this case, defendant concedes that the first and third elements are satisfied. Thus, the only issue on appeal is whether there was sufficient evidence presented to show that defendant is guilty of “a felonious taking of property from the victim's presence or person.” *Rodgers, supra* at 707. In an armed robbery case, the prosecution must show that “the property was taken in the victim's 'presence' and that the victim's right to possess the property was superior to the defendant's right to possess it.” *Id.* For the purpose of a conviction under MCL 750.529, an item is within the presence of a victim if it is within his reach, inspection, observation or control, so that he could, if not overcome by violence or prevented by fear, retain his possession of it. *People v Raper*, 222 Mich App 475; 482; 563 NW2d 709 (1997).

Applying these standards to the instant case, there is sufficient evidence to support defendant's armed robbery conviction. One of the victims testified that defendant took his necklace that was hanging on the bedroom door while defendant and Shepherd held the family at gunpoint. This testimony, when viewed in a light more favorable to the prosecution, is sufficient evidence that defendant committed a “felonious taking of property from the victim's presence.” *Rodgers, supra* at 707.

At a minimum, defendant is guilty as one who aided and abetted Shepherd's armed robbery. In *People v Moore*, 470 Mich 56, 63, 67-68; 679 NW2d 41 (2004), the Supreme Court set forth the elements of an aiding and abetting analysis:

The general rule is that, to convict a defendant of aiding and abetting a crime, a prosecutor must establish that “(1) the crime charged was committed by the defendant or some other person; (2) the defendant performed acts or gave encouragement that assisted the commission of the crime; and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time that [the defendant] gave aid and encouragement.” *People v Carines*, 460 Mich 750, 768; 597 NW2d 130 (1999).

Applying these legal principles to the instant case, there is also sufficient evidence to support defendant's conviction on an aiding and abetting theory. Defendant provided “aid and encouragement” to the robbery by taking control over four members of the family they were robbing. The evidence shows that defendant held a mother and her three children at gunpoint while Shepherd took money from the father's pants. One of the children testified that defendant ordered the children to go upstairs so that defendant and Shepherd could shoot the father out of view of the children. When the men lost control of the situation, Shepherd shot the mother three times before escaping through the front door of the house. Defendant facilitated Shepherd's escape when he tussled with the father.

The evidence also shows that defendant had knowledge of what his partner was doing. Specifically, defendant and Shepherd showed their weapons shortly after arriving at the house, indicating that defendant came to the house armed with a gun. Further, one of the children testified that defendant did not say anything while they were in the bedroom, but recalled that defendant was paying attention to Shepherd and the father during the robbery. The mother and two of her children all testified that Shepherd spoke in a voice loud enough for everybody in the room to hear what was being said. Indeed, the bedroom where the robbery occurred was approximately 11 ½ by 7 feet. Even the two youngest children's testimony reveals that they had

a general understanding of what occurred. Based on the witnesses' testimony, everybody in the room was aware of what Shepherd was doing, including defendant.

Based on this record, the guns, the fact that the encounter with the family was limited to a demand for their goods, and defendant's proximate location to Shepherd while Shepherd executed the robbery, one could reasonably conclude that defendant intended to rob the family, or at a minimum, knew that this was the intent of Shepherd. Accordingly, the prosecutor presented sufficient evidence to support defendant's armed robbery conviction.

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Donald S. Owens